

REMARKS

This responds to the Office Action mailed December 28, 2004. In that Office Action, the Examiner rejected claims 38-43 under 35 U.S.C. § 112, first paragraph. Claims 38-43 have been canceled thereby rendering this rejection moot. Therefore, claims 44-47 and new claims 60-67 remain pending. Claims 44 and 45 have been amended merely in a formal respect to consistently refer to the "collapsible member" for antecedent purposes.

Claims 44-47 were separately rejected under 35 U.S.C. § 102(b) as being anticipated by Angell, U.S. Patent No. 4,042,979 (the '979 patent) and Northrup, III, U.S. Patent No. 5,593,424 (the '424 patent). For the reasons set forth below, Applicants respectfully submit that claims 44-47, and new claims 60-67 are patentable.

Summary of the Substance of Personal Interview Conducted on May 3, 2005

During the personal interview conducted on May 3, 2005, Applicants' undersigned counsel discussed the present amendment with Examiner Matthews. In particular, Applicants' counsel stated that claims 38-43 would be canceled, claims 44 and 45 would be amended only in formal respects, as discussed above, and that claims 60-67 would be added. In addition, Applicants' counsel summarized the arguments made below with respect to the rejections of claims 44-47 and further stated that claims 60-67 should be allowable for similar reasons. The other art of record has also been reviewed with respect to claims 44-47 and new claims 60-67, and these claims are respectfully submitted to be allowable over the other art of record as well.

The Rejection of Claims 44-47 Under 35 U.S.C. § 102(b) as being Anticipated by the '979 Patent

In section 3 of the detailed action, the Examiner states: "Regarding claims 44-47, figure 4 shows collapsible member 12, shortening device 14, mesh 13, and coupler 39." First, item 12 in the '979 patent is referred to as a "frame 12" and, at column 2, lines 28-29, the '979 patent specifically states: "Frame 12 may be rigid or flexible but is [sic, it] must not be constrictable." The Examiner's characterization of element 12 as being a "collapsible member" as set forth in claim 44 is clearly contrary to the express teachings of the '979 patent. Frame 12 is specifically designed not to be collapsible or constrictable. In addition, frame 12 is not "movable between an extended position...and a short position" as specifically set forth in claim 44. Finally, frame 12 shown in the '979 patent is specifically assembled into a ring-shaped device 10 which is then stitched to the mitral valve in a surgical procedure, as progressively shown in Figs. 1-3 of the '979 patent. Claim 44 therefore further distinguishes from the structure and function of the ring shown in the '979 patent by requiring that the collapsible member is "movable between an extended position for insertion into a left ventricle through a catheter." The '979 patent fails to disclose that the frame 12 or the overall ring 10 may be inserted into a left ventricle through a catheter. Moreover, the structure shown in the '979 patent would not have the ability to perform such a function as is required to meet anticipation under 35 U.S.C. § 102. For at least all of these reasons, independent claim 44 is not anticipated by the '979 patent and, likewise, its dependent claims 45-47 also fail to be anticipated by the '979 patent.

The Rejection of Claims 44-47 under 35 U.S.C. § 102(b) as Being Anticipated by the '424 Patent

Regarding this rejection, the Examiner states in section 4 of the detailed action: "Regarding claims 44-47, figure 6 shows collapsible member 100, shortening device 60, mesh 70, and couplers 60." First, reference 100 in the '424 patent refers to the entire apparatus after it has been surgically secured to vascular structure 50 by way of numerous sutures 60. Apparatus 100 is clearly not "movable between an extended position for insertion into a left ventricle through a catheter and a short position." In fact, the '424 patent again relates to a surgically implemented annuloplasty procedure and not a catheter-based annuloplasty procedure. The Examiner refers to one of the sutures 60 as the claimed "shortening device." It should be recognized, however, that each suture 60 merely pulls together tissue between holes 24, 26 of suture support segment 10. The suture 60 does not "move the collapsible member between the extended position and the short position" as specifically set forth in claim 44. Segments 10 are individually sutured to the tissue as shown in Fig. 3, for example, and the shortening function is likewise accomplished individually by moving the tissue from distance d' to distance d as shown in Figs. 1 and 2 and explained in column 5, lines 17-45 of the '424 patent. For all of these reasons, the '424 patent fails to anticipate the combination set forth in independent claim 44, as well as dependent claims 45-47.

New Claims 60-67

Claim 60 is likewise directed to a device for effecting a catheter-based annuloplasty procedure. This claim, and its respective dependent claims, specifically set forth a plurality of non-plicating fasteners configured to be individually fixed to tissue

adjacent the annulus of a heart valve at spaced locations without plicating the tissue at the spaced locations. The device also comprises at least one catheter having a lumen capable of delivering and inserting the plurality of fasteners into the tissue adjacent the annulus. As further set forth in claim 60, an elongate tensioning element is coupled with the plurality of fasteners and is configured to be tensioned by pulling on only one end thereof to place the plurality of fasteners in an activated state positioned closer together to plicate the tissue between the fasteners. Finally, a locking feature is set forth in claim 60 to fix the plurality of fasteners in the activated state. One illustrative example of such a device is discussed in connection with Figs. 10, 11a and 11b of the present application. This embodiment illustrates non-plicating fasteners (e.g., T-bars 1012, 1112) and a tension element 1140 operated by pulling on only one end thereof. Applicants respectfully submit that this combination of features is also patentable over the art of record.

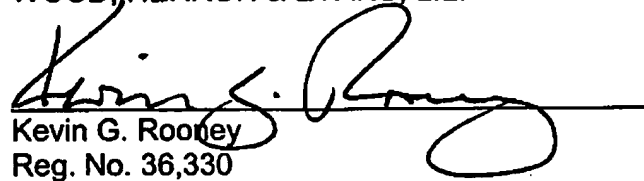
The application is now believed to be in complete condition for allowance. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants do not believe that any fees are due in connection with this response other than the extension fee. However, if such petition is due or any fees are

necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

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